

Circuit Court for Anne Arundel County
Case No. C-02-CV-21-000059

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND**

No. 1872

September Term, 2021

LAURA GRATTON

v.

JOSHUA PROGAR, ET AL.

Friedman,
Tang,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: March 9, 2023

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. MD. R. 1-104.

**At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

Laura Gratton appeals the order of the Circuit Court for Anne Arundel County granting summary judgment and quieting title to real property in favor of Joshua Progar and Emma Progar, husband and wife, and of M&T Bank. The circuit court ruled that Gratton has no lien or interest in the property. Gratton asks us to consider three questions, which we consolidate into a single question: did the circuit court err in granting appellees' motions for summary judgment based on finding that Gratton maintained no equitable rights to—and therefore no lien interest in—the Progars' property? For the reasons that follow, we find no error and affirm the order of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

In 2015, Gratton entered into a land installment contract with Garrett Long to purchase the real property known as 1476 Park Lane, Pasadena, Maryland, for \$550,000.¹ Gratton paid Long \$70,500.00 under the contract. The land installment contract was defective, however, because it did not conform with statutory requirements and because Long failed to properly record the contract among the land records of Anne Arundel County. As a result, in 2018, Gratton canceled the land installment contract, surrendered possession of the property, and sued Long for breach of contract (the “breach case”). Gratton sought a declaration that the contract and her obligations under the contract were

¹ A land installment contract is a legally binding executory agreement under which the vendor agrees to sell an interest in property to the purchaser and the purchaser agrees to pay the purchase price in five or more subsequent payments exclusive of the down payment, if any, and the vendor retains title as security for the purchaser's obligation. MD. CODE, REAL PROP. (“RP”) § 10-101(c). Pursuant to a land installment contract, “the buyer is considered the equitable owner of the land, entitled to use and possession and the benefit of any appreciation in the property's value.” *Long v. Burson*, 182 Md. App. 1, 19 (2008).

canceled and sought money damages for the \$70,500.00 she paid to Long. In addition, on May 29, 2019, Gratton filed a notice of *lis pendens* to provide notice to prospective buyers that an action encumbering the subject property was pending.

While the breach case was pending, Long conveyed title to the subject property to the Progars by deed dated May 31, 2019. In 2020, the Progars conveyed a refinance deed of trust to M&T Bank.

On July 11, 2019, the circuit court entered a \$68,300 money judgment against Long and in favor of Gratton in the breach case and declared that the land installment contract between her and Long was canceled. Long never paid the money judgment.

On January 13, 2021, in an apparent attempt to collect on her judgment against Long, Gratton filed a complaint to quiet title against the Progars, the record title owners, and M&T Bank, the holder of a deed of trust secured by the subject property.² Gratton argued that her breach case was actually an action affecting title to property because it related to the land installment contract. Because the breach case was an action affecting title to property, Gratton argued, she held a judgment lien on the property because of the judgment entered in the breach case and her notice of *lis pendens*. Gratton asserted that her judgment position relating to the property was superior to that of M&T Bank and was clouded by the Progars' claim to the property. Gratton therefore sought a ruling and decree

² The complaint also listed as a defendant Mortgage Electronic Services, Inc. (“MERS”), as a holder of interest in the subject property. The parties later stipulated that MERS had agreed to be bound by the circuit court’s determination in the action and would not be required to appear or defend the action.

by the circuit court that her judgment in the breach case established a priority judgment lien against the subject property, free and clear of other conflicting claims.

In their motions for summary judgment, the Progars and M&T Bank argued, in pertinent part, that: (1) no lien could attach to the subject property because Gratton did not obtain her money judgment against Long until after he had transferred the property to the Progars and no longer had any interest in it; (2) the breach case was not an action affecting title to property, and the doctrine of *lis pendens* only applies to actions affecting title to property; and (3) Gratton was not then in possession of the property, as required to obtain quiet title relief.

Finding no material facts in dispute, the circuit court found that this case turned on whether the breach case was an action affecting title to property.³ The circuit court found that Gratton's complaint for money damages against Long was not an action affecting title to property. The circuit court further determined that Gratton acknowledged, by the declaratory action part of the breach case, that she did not owe anything to Long and was entitled to damages. Despite the Progars' apparent knowledge of the breach case, the circuit court continued, that case did not put the Progars on notice that it could cloud title to the property because it did not resolve until after they had purchased the property. The circuit

³ The circuit court described the question as whether the breach case was "*in personam* or *in rem*." The parties used that same terminology in the circuit court and on appeal. Although we have done so on occasion in the past, *see Kim v. Council of Unit Owners for Collington Ctr. III Condo.*, 180 Md. App. 606, 625 (2008), we find it preferable not to use those Latin terms, borrowed from issues of jurisdiction, to discuss the characterization of the subject of the lawsuit.

court therefore granted the defendants’ motions for summary judgment, quieted title to the subject property in favor of the Progars, and determined that Gratton had no right, title, or interest in the subject property. Gratton appealed.

DISCUSSION

This case prompts us to consider—given the timing of events and the posture of the proceedings—whether Gratton’s judgment against Long relates to the Progars and their property, and why. To start, we note that a money judgment lien is prospective and not retroactive. A money judgment constitutes a lien on the judgment debtor’s interest in real property if indexed and recorded according to the Maryland Rules, but such a lien is not effective *until* the date of entry of the money judgment. MD. CODE, CTS. & JUD. PROC. (“CJ”) § 11-402(b); MD. RULE 2-621(a). Under the doctrine of *lis pendens*, however, when a person purchases real property while title to the property is the subject of litigation in an action affecting title to property, and receives notice of that litigation, then the purchaser is bound by the outcome of the litigation. *Greenpoint Mortg. Funding, Inc. v. Schlossberg*, 390 Md. 211, 222 (2005). Here, Gratton filed the breach case in July 2018, but the circuit court did not enter judgment in her favor until July 11, 2019, more than a month after Long had conveyed title to the subject property to the Progars. Therefore, absent a writ of attachment before judgment,⁴ the only way the Progars could be bound by the outcome of

⁴ While the breach case was pending, Gratton could have attempted to bind the property—to ensure it would be available to satisfy a money judgment against Long—by requesting a writ of attachment before judgment and a bond pursuant to Maryland Rule 2-115 and CJ § 3-303. She did not do so.

the breach case is if the breach case was an action affecting title to property to which the doctrine of *lis pendens* applies.⁵

The *lis pendens* doctrine in Maryland applies only to actions affecting title to, or a leasehold interest, in real property.⁶ MD. RULE 12-102(a); *DeShields v. Broadwater*, 338 Md. 422, 435 (1995). As this Court explained:

Lis pendens literally means a pending action; thus, the doctrine of *lis pendens* concerns the jurisdiction, power, or control that a court acquires over real property involved in an action, pending final judgment. The doctrine applies only to cases in which the complaint directly relates to the property, or the ultimate aim of the complaint is to subject the property to disposal by a decree of court.

It is generally recognized that *lis pendens* may not be predicated upon an action seeking recovery of money damages prior to securing a valid judgment that has become a lien upon property subject to *lis pendens*.

Warfel v. Brady, 95 Md. App. 1, 7-8 (1993) (cleaned up).

Gratton argues, in essence, that her victory in the breach case entitled her to equitable rights to the property that Long used to own. She argues that the breach case was

⁵ Prior to the amendments to Rule 12-102(b) adopted by the Supreme Court of Maryland effective April 1, 2022, when the doctrine of *lis pendens* applies, “the filing of the complaint” itself provides “constructive notice of the *lis pendens* as to real property in the county in which the complaint is filed.” MD. RULE 12-102(b) (2021); *Weston Builders & Devs., Inc. v. McBerry, LLC*, 167 Md. App. 24, 35-36 (2006). A separate notice of *lis pendens* is only required if the real property is located in another county. MD. RULE 12-102(b) (2021).

⁶ The full scope of the application of *lis pendens* encompasses actions “directly relating to the title to the property transferred or in which the ultimate interest and object is to subject the property in question to the disposal of a decree of the court.” *DeShields*, 338 Md. at 435. Rule 12-102(a) provides that *lis pendens* applies to actions affecting “title to or a leasehold interest in real property.” Because this case is not at all concerned with leaseholds, however, for the purposes of this discussion, *lis pendens* applies only to actions affecting title to property.

an action affecting title to property because it arose out of a land installment contract and sought relief related to that land installment contract, and that, therefore the act of filing the complaint in the breach case provided constructive notice of the *lis pendens* to prospective buyers. The fact that the breach case resulted in canceling the land installment contract, Gratton argues, is “legally irrelevant” because the money judgment in that case retroactively created a priority lien on the property as of the date she filed her breach of contract complaint. The Progars and M&T Bank counter that the 2018 breach case, which resulted in money damages, was not an action affecting title to property. Therefore, the money judgment in that case could not attach to the subject property, which was no longer owned by Long, the judgment debtor, when the judgment was entered.

We agree with the Progars and M&T Bank and explain why Ms. Gratton’s breach case, while *related* to real property, was not an action affecting title to real property and thus not “an action to which the doctrine of *lis pendens* applies.” MD. RULE 12-102(b).

Because Gratton requested no relief in the breach case that would have affected title to the subject property, we hold that the breach case was not an action affecting title to property. The relief Gratton requested was a declaration by the circuit court confirming that the contract had been canceled and that she was entitled to money damages due to the breach. The fact that the breach case “was fil[l]ed with myriad references to MD. CODE ANN., REAL PROP. §10-101, *et seq.*” has no bearing on whether it was an action affecting title to property. The breach case, therefore, was not “an action to which the doctrine of *lis pendens* applies.” MD. RULE 12-102(b). Because the doctrine of *lis pendens* does not apply, Gratton’s claim, that *lis pendens* created a priority in her favor that related back to the date

of the filing of her complaint in the breach case and clouded the title to the subject property, must fail.

For all the foregoing reasons, the circuit court correctly entered summary judgment in favor of the Progars and M&T Bank as a matter of law. *Wash. Mut. Bank v. Homan*, 186 Md. App. 372, 387-88 (2009) (where there are no material facts in dispute, we determine if summary judgment was correct as a matter of law).

**JUDGMENT OF THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY IS
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**